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Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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April 12, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

We write regarding the Environmental Protection Agency's proposal included in its July 13, 2015, proposed rule on medium- and heavy-duty truck greenhouse gas emissions standards that would reverse the agency's longstanding practice allowing the modification of vehicles to be used solely for racing.¹ During your testimony before the House Committee on Energy and Commerce on March 22nd, you stated that the intent of this proposal was to ensure vehicles that have certificates of conformity with EPA regulations will remain in compliance with clean air regulations; this statement underscores that EPA intends to prohibit people from making certain modifications necessary to convert street vehicles into race cars.

This problematic proposed change is made more troubling by the manner in which it was introduced. Buried in the middle of a lengthy and unrelated rule, it went unnoticed by nearly all interested parties until after the comment period came to a close. Even when EPA staff briefed this Committee about the proposed rule shortly after it was introduced last July, no mention was made of these proposed racing provisions. EPA has stated that the proposed rule will be finalized this July.

While we appreciate EPA's recent reopening of the comment period for an additional 30 days, the agency has thus far provided no analysis upon which to comment. For example, the public has no idea what environmental goal EPA expects to achieve with a ban on modifying vehicles for racing--a legitimate question given that such vehicles represent a small fraction of one percent of the overall fleet.

¹ Specifically, EPA proposes to add the following new language to 40 C.F.R. § 86.1854-12: Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become nonroad vehicles or engines;...

In the 46 years since enactment of the 1970 Clean Air Act, EPA took no enforcement action with regard to EPA-certified vehicles modified solely for racing, and it was widely accepted that these vehicles were exempted from the statute's anti-tampering provisions. This proposed change would abruptly end this policy.

Particularly troublesome is the lack of any analysis, pursuant to the Regulatory Flexibility Act, of the economic impacts of this regulatory change on small businesses. With EPA's tacit approval over nearly a half-century, an entire industry has grown around the modification of EPA-certified cars, motorcycles, and other vehicles for racing purposes—from parts manufacturers and retailers to garages to race tracks—most of which are small businesses. Now, the legality of this industry has been called into question by the EPA.

In addition, there are the thousands of racing enthusiasts who own these vehicles and who have had every reason to believe that what they were doing was legal. Overnight, these vehicle owners may be considered lawbreakers by EPA and potentially subject to penalties similar to those Volkswagen now faces for allegedly using "defeat devices" to pass EPA emissions tests.

We remain doubtful that this proposed policy change complies with Congressional intent, which we believe is to exempt racing vehicles from the Clean Air Act's provisions. Therefore we believe any proposed policy change of this magnitude warrants its own notice of proposed rulemaking, complete with all required environmental, economic, and statutory analyses to ensure full public examination of the proposal.

In the meantime, we seek additional information on EPA's proposal. Accordingly, please respond to the following questions by April 22, 2016:

1. What specifically prompted EPA to determine a revision was necessary to propose in its regulatory language at 40 C.F.R. § 86.1854-12 prohibiting modification of vehicles?
2. What is the environmental rationale for treating vehicles modified so that the vehicles can be used exclusively for racing as being out of compliance with the Clean Air Act? Please include all environmental analysis of this proposed change.
3. What language in the Clean Air Act does EPA rely upon for the proposition that vehicles modified to be exclusively used for racing can be prohibited?
4. Do you believe the owners of these vehicles and the industry that serves them have been given adequate notice and information to assess the proposed change?
5. What analysis has EPA undertaken regarding the economic impact of this proposal, and especially the impact on small businesses? Please provide any such analysis.
6. EPA asserts that modifying vehicles so that they can be used for racing has been illegal all along, and that EPA is merely clarifying that this is so.

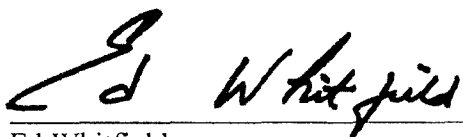
- a. If so, are owners of certified vehicles that have been modified for racing currently in violation of the law?
 - b. What enforcement actions has EPA taken against vehicles modified for racing over the past 46 years?
7. What are EPA's plans for enforcement of vehicles modified for racing and what resources does EPA plan to devote to this activity?

Should you have any questions, please contact Ben Lieberman or Peter Spencer of the majority committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



Ed Whitfield
Chairman
Subcommittee on Energy and Power



Richard Hudson
Member

cc: The Honorable Frank J. Pallone, Jr., Ranking Member
Committee on Energy and Commerce

The Honorable Bobby Rush, Ranking Member
Subcommittee on Energy and Power

